

**CALENDAR ITEM  
C31**

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PRC 8820.1

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**TERMINATION AND ISSUANCE OF A  
GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE**

**LESSEE:**

Patrick D. Craig and Kathryn A. Craig, Trustees of the Patrick D. Craig and Kathryn A. Craig Family Trust dated 10/31/2000

**APPLICANT:**

Edward A. Zuckerman and Sarah N. Zuckerman

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in the original bed of the San Joaquin River, adjacent to 2015 Moreing Road, near Stockton, San Joaquin County.

*AUTHORIZED USE:*

Use and maintenance of a floating dock, cable anchors, gangway, and bank protection previously authorized by the Commission and installation, use and maintenance of a dock addition, stiff-arm anchor, and existing fill area not previously authorized by the Commission.

*LEASE TERM:*

10 years, beginning April 20, 2017.

*CONSIDERATION:*

**Dock, Gangway, Stiff-Arm Anchor and Fill Area:** \$708 per year, with an annual Consumer Price Index adjustment.

**Bank Protection:** The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

*SPECIFIC LEASE PROVISIONS:*

Liability insurance in an amount no less than \$1,000,000 per occurrence.

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**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5;  
California Code of Regulations, title 2, section 2000, subdivision (b).

**Public Trust and State's Best Interests Analysis:**

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes that include, but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, visitor-serving amenities, habitat preservation, and open space. The Commission is the trustee of the State's sovereign land.

On April 9, 2009, the Commission authorized a General Lease – Recreational and Protective Structure Use for the construction, use and maintenance of a floating dock, cables, gangway, and bank protection to Patrick D. and Kathryn A. Craig, Trustees of the Patrick D. Craig and Kathryn A. Craig Family Trust dated 10/31/2000 ([Calendar Item C9, April 9, 2009](#)). The lease will expire on April 8, 2019. On October 2, 2014, ownership of the upland was transferred to the Applicant. Staff is recommending termination of the lease because the prior owner abandoned the lease premises without executing a Quitclaim. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the use and maintenance of the existing floating dock, cable anchors, gangway, and bank protection. In addition, the Applicant is applying to install a dock addition, strong-arm anchor system to replace the existing cable anchor, and for the use of an existing area of fill.

The lease area extends onto the original bed of the San Joaquin River (also known as Atherton Cove) which at this location is natural and subject to artificial influences including dredging, fill, diversions, and levees. The San Joaquin River in this vicinity has been artificially channelized to create a straight, navigable, deep water, shipping path to the Port of Stockton. The deep water channel artificially cut off portions of the natural San Joaquin River. In July 1933, the State, through the Director of Finance, quitclaimed its interest in a portion of the original bed adjacent to the southerly end of Moreing Road. This area was filled to create a private access road to the Atherton Island subdivision which permanently blocked the river's natural flow creating Atherton Cove.

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There are approximately 18 private properties along the shoreline of Atherton Cove providing little, if any, public access from the landward side because the area is secluded and difficult to access. The Applicant owns a parcel adjacent to Moreing Road that is fenced and gated, blocking access to the fill area. On the waterward side, access to the fill area is limited by protective riprap along the bank. The recreational boating activity in this region does not frequent the Atherton Cove shoreline due to its distance from publicly available access points and the fact that it is a short dead-end cove. Additionally, the protective riprap does not make it convenient for recreational uses.

Recreational boating is water-dependent and has long been considered consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). However, the fill area is not associated with traditional Public Trust uses. The Commission has issued leases on a limited basis for portions of filled lands that encroach onto sovereign lands where such encroachments do not significantly interfere with the Public Trust needs and values.

Although the subject facilities are a private use of public property, the limited water-related recreational value of this area and the relatively small private use encroaching onto State-owned lands indicate a lease for the subject facilities would not substantially interfere with the Public Trust needs and values at this time and for a limited term.

Based upon the particular facts at this location, staff recommends the Commission find that the proposed lease would not result in a substantial interference with the Public Trust needs and values at this time and in this location. In addition, the lease is limited to a 10-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove all improvements from State land. The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. Additionally, the resources, costs, time and uncertainty associated with seeking removal of the relatively small fill area is significant.

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**Climate Change:**

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is a tidally influenced site vulnerable to flooding at current sea levels that will be at a higher risk of flood exposure given future projection scenarios of sea-level rise. The facilities associated in this lease area include an existing floating dock, cable anchors, gangway, and bank protection. In addition, the Applicant is applying to install a dock addition and a strong-arm anchor system that connects the dock to an upland concrete block with a pivot joint that allows for variable water levels to replace the existing cable anchor, and use an existing fill area adjacent to 2015 Moreing Road near Stockton. Sea-level rise coupled with other dynamic coastal processes and events such as scour, erosion, extreme tides, and storm surge could pose increased flooding risks to the lease area.

By 2030, the coastal region could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). These changes in sea level could lead to changes in the regular inundation levels within the lease area. Rising sea levels can lead to more frequent flooding in low-lying areas and more dynamic tidal events. As stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise). In rivers and tidally-influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. In rivers and tidally influenced waterways, flooding and storm flow, as well as runoff, will likely increase scour and decreasing bank stability at a faster rate.

The combination of these projected conditions could potentially raise the likelihood of damage to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause structures to be damaged or dislodged, presenting hazards to public safety, as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels exposing previously submerged structures to the elements potentially leading to increased wear and tear on the floating dock reduce

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navigability of the channel thereby increasing hazards, and impact the function and utility of the lease area structures.

The floating dock and gangway are adaptable to variable water levels, allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement of dock facilities. The bank protection provides stability and reduces the amount of erosion and scour pressure it may experience during future events, but remains at risk of accelerated deterioration from currents and floods. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

Pursuant to the proposed lease, the Applicant acknowledges that the Lease Premises are located in an area that may be subject to effects of climate change, including sea-level rise.

**Conclusion:**

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease, is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. The staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

4. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are “significant” by nature of their public ownership (as opposed to “environmentally significant”). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project’s consistency with the use classification as required by California Code of Regulations, title 2, section 2954 is not applicable.

**APPROVALS OBTAINED:**

U.S. Army Corps of Engineers  
Department of Fish and Wildlife  
Central Valley Flood Protection Board Encroachment Permit  
Regional Water Quality Control Board-Central Valley Region

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

**AUTHORIZATION:**

1. Authorize termination of Lease No. PRC 8820.1, effective April 19, 2017.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to Edward A. Zuckerman and Sarah N. Zuckerman beginning April 20, 2017, for a term of 10 years, for the use and maintenance of a floating dock, cable anchors, gangway, and bank protection previously authorized by the Commission and

CALENDAR ITEM NO. **C31** (CONT'D)

installation, use and maintenance of a dock addition, stiff-arm anchor, and existing fill area not previously authorized by the Commission as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the floating dock, gangway, stiff-arm anchor and fill area: \$708 per year, with an annual Consumer Price Index adjustment; consideration for the bank protection: the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

PRC 8820.1

### LAND DESCRIPTION

A parcel of tide and submerged land, whether filled or unfilled, situate in the bed of the Atherton Cove (formerly the bed of the San Joaquin River), lying adjacent to Swamp and Overflowed Land Survey 444, patented December 19, 1867, County of San Joaquin, State of California and more particularly described as follows:

All those lands underlying a proposed uncovered floating boat dock and stiff arm and an existing uncovered floating dock and gangway lying adjacent to and southwesterly of those lands as described in "Exhibit A" of that Grant Deed, Recorded October 02, 2014 in Document Number 2014-098914 in Official Records of said County.

TOGETHER WITH all those lands underlying existing bank protection lying adjacent to said deed.

ALSO TOGETHER WITH any applicable impact area(s) lying adjacent to said deed.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of the historic San Joaquin River (Atherton Cove).

Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

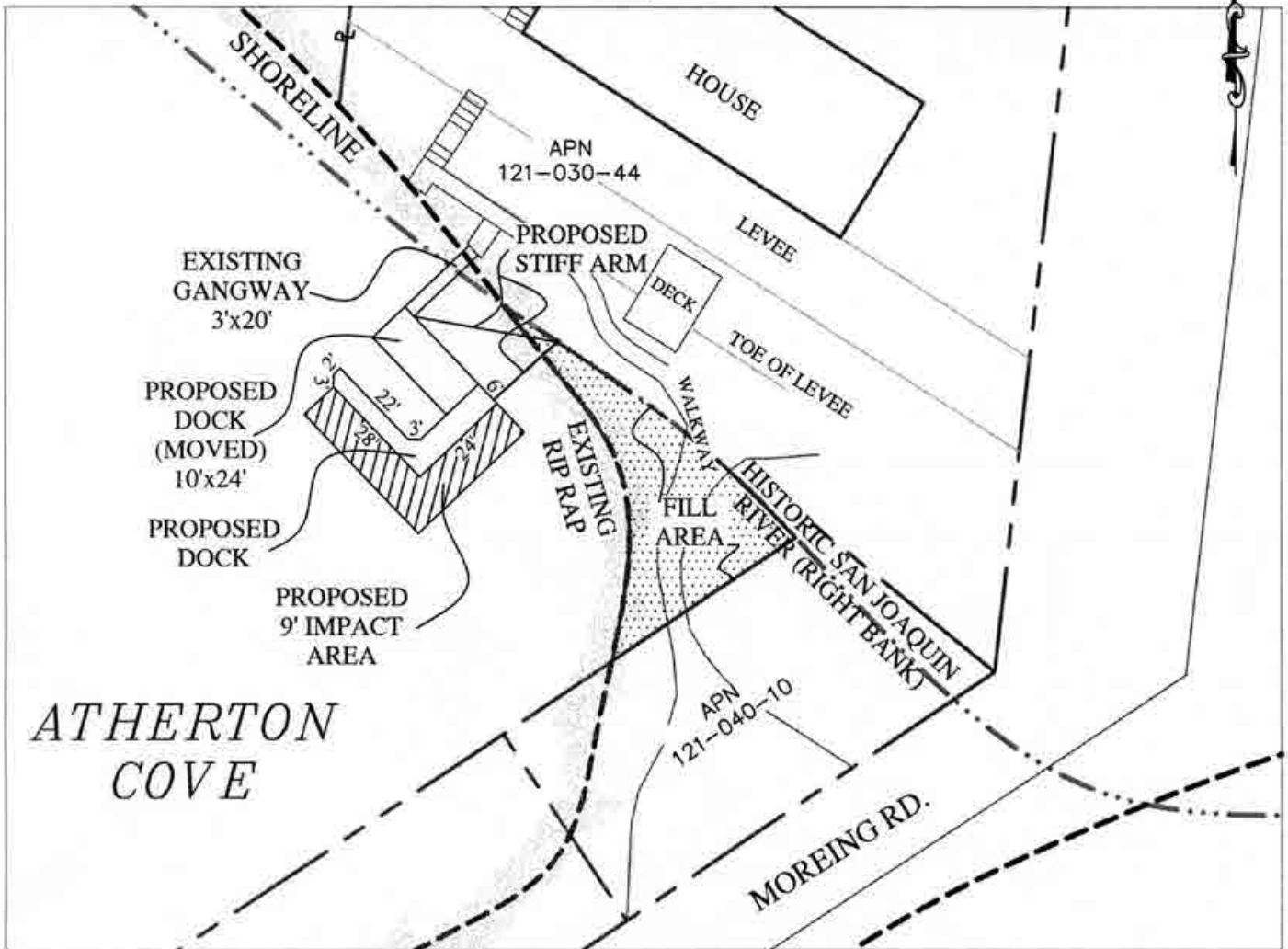
PREPARED 2/06/17 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT





NO SCALE

## SITE



2015 MOREING RD., STOCKTON

NO SCALE

## LOCATION



MAP SOURCE: USGS QUAD

## **Exhibit B**

PRC 8820.1  
ZUCKERMAN  
APN 121-030-44,10  
GENERAL LEASE -  
RECREATIONAL & PROTECTIVE  
STRUCTURE USE  
SAN JOAQUIN COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

MJF 2/06/17